

1 RICHARD C. GILLER (SBN 117823)  
2 [richard.giller@gmlaw.com](mailto:richard.giller@gmlaw.com)  
3 RYAN DUCKETT (SBN 288750)  
4 [ryan.duckett@gmlaw.com](mailto:ryan.duckett@gmlaw.com)  
5 JAMEY R. CAMPELLONE (*Pro Hac Vice Anticipated*)  
6 [jamey.campellone@gmlaw.com](mailto:jamey.campellone@gmlaw.com)  
7 **GREENSPOON MARDER LLP**  
8 1875 Century Park East, Suite 1850  
9 Los Angeles, California 90067  
10 Tel: (480) 306-5458  
11 Fax: (480) 306-5459  
12 *Attorneys for The Credit Pros International Corporation*

10 **UNITED STATES DISTRICT COURT**  
11 **EASTERN DISTRICT OF CALIFORNIA**  
12 **SACRAMENTO**

12 KIMBERLY P. TAYLOR,  
13 Plaintiff,

14 v.

15 THE CREDIT PROS  
16 INTERNATIONAL CORPORATION,  
17 Defendant.

Case No. 2:23-cv-01875-TLN-AC  
(Case assigned to the Hon. Troy L. Nunley)

**DEFENDANT THE CREDIT PROS  
INTERNATIONAL CORPORATION'S  
NOTICE OF MOTION AND MOTION  
TO DISMISS; MEMORANDUM OF  
POINTS AND AUTHORITIES**

Hearing Date: December 14, 2023  
Time: 2:00 p.m. PST  
Courtroom: 2  
Judge: Honorable Troy L. Nunley

22  
23 **PLEASE TAKE NOTICE** that under Rules 9(b) and 12(b)(6) of the  
24 Federal Rules of Civil Procedure, and Local Rules 133 and 230, on **December 14,**  
25 **2023, at 2:00 p.m. PST,** in Courtroom 2 of this Court located at 501 I Street,  
26  
27 Sacramento, California, Defendant The Credit Pros International Corporation  
28 (“Credit Pros” or “Defendant”), by and through the undersigned attorneys, will move

**DEFENDANT’S NOTICE OF MOTION AND MOTION TO DISMISS;  
MEMORANDUM OF POINTS AND AUTHORITIES**

1 to dismiss the Amended Complaint [D.E. 10] filed by Plaintiff Kimberly P. Taylor  
2 (“Plaintiff”) on the basis that the Amended Complaint continues to fail to state a claim  
3 for relief.  
4

5 This Motion is based upon this Notice of Motion, the incorporated  
6 Memorandum of Points and Authorities, and the entire court file and any other  
7 pleadings, evidence, or legal arguments that may be presented at the time of the  
8 hearing to the extent one is held.  
9

## 10 **MEMORANDUM OF POINTS AND AUTHORITIES**

### 11 **I. INTRODUCTION**

12  
13 Plaintiff continues to seek to assert claims against Credit Pros that sound in  
14 fraud under the Credit Repair Organization Act, 15 U.S.C. § 1679 *et seq.* (“CROA”),  
15 and the California Credit Services Organizations Act of 1984, pursuant to Cal. Civ.  
16 Code § 1789.10 *et seq.* (“CCSOA”). But to do so, as set forth in the Federal Rules of  
17 Civil Procedure, Plaintiff must allege such claims with particularity to safeguard  
18 Credit Pro’s reputation from improvident charges of wrongdoing. Simply put,  
19 Plaintiff continues to completely fail to allege her fraud-based claims with  
20 particularity. Accordingly, Credit Pros respectfully requests that the Court enter an  
21 Order dismissing the fraud-based claims attempted to be asserted in Plaintiff’s  
22 Amended Complaint. Because Plaintiff previously attempted to correct her pleading  
23 deficiencies vis-à-vis her Amended Complaint, but failed to do so in any substantive  
24 way, Plaintiff’s fraud-based claims should be dismissed with prejudice.  
25  
26  
27  
28

1           **II.     STATEMENT OF FACTS**

2           On August 31, 2023, Plaintiff filed her Complaint against Credit Pros.  
3  
4           On September 27, 2023, Credit Pros filed a Motion to Dismiss Plaintiff’s Complaint.  
5           *See* D.E. 5. Instead of responding to Credit Pros’ Motion to Dismiss, or otherwise  
6           defending her Complaint, Plaintiff filed an Amended Complaint against Credit Pros.  
7           *See* D.E. 10. While Credit Pro’s alleged relationship with Plaintiff was contractual in  
8           nature (Am. Compl. ¶ 13), Plaintiff’s Amended Complaint seeks to assert claims  
9           pursuant to 15 U.S.C. § 1679b(a)(3)-(4) (Count I(a))<sup>1</sup> and Cal. Civ. Code § 1789.13  
10           (Count II(a)), based on supposed guarantees, assurances, and representations of  
11           unknown Credit Pros representatives, allegedly uttered at unknown times, and entirely  
12           devoid of meaningful, substantive context. Am. Compl., ¶¶ 9-11, 17, 20.  
13           Curiously, Plaintiff’s Amended Complaint does not assert any claim pursuant to the  
14           purported agreement (notwithstanding Count II(b), which does not seek relief for  
15           breach of contract but rather pursuant to Cal. Civ. Code § 1789.17). *See* Am. Compl.  
16           ¶ 17. Instead, Plaintiff continues to allege the following barebone “guarantees” and  
17           “representations” to attempt to support her claims sounding in fraud as follows:  
18  
19

- 20           8.     In approximately February of 2021, Plaintiff was wanting to  
21           address various debts that were appearing on and negatively  
22

---

23  
24  
25           <sup>1</sup> Count I continues to purport to assert additional disparate CROA violations against Credit Pros  
26           predicated entirely on technical violations of CROA. *See* Count I(b) (predicated on 15 U.S.C. §  
27           1679b(b)), Count I(c) (predicated on 15 U.S.C. § 1679c), and Count I(d) (predicated on 15 U.S.C.  
28           § 1679d). These additional alleged CROA violations are not at issue in this Motion.

impacting her credit score, and so began looking into credit repair companies.

9. Around the same time, Plaintiff came across Defendant, and then spoke with a representative regarding Defendant's services.

10. Upon speaking with Defendant, Plaintiff was informed that Defendant would be able to get negative information removed from Plaintiff's credit reports, and in turn improve her credit.

11. Plaintiff discussed the issues she wanted addressed and removed from her credit reports, and Defendant affirmatively represented to Plaintiff that she would achieve the desired improvement to her credit and that the negative information would be removed.

• • •

13. Finding the nature of Defendant's representations desirable and believing that Defendant would be able to get the desired information removed, Plaintiff and Defendant entered into an agreement in connection for Defendant's provision of credit repair services.

• • •

16. Despite Plaintiff's maintenance of payments for years, Defendant has failed to deliver the represented results or services.

• • •

20. Defendant's conduct sought to string Plaintiff along for years under the guise that results would be delivered, only for no such results to come about.

• • •

28. Defendant violated [15 U.S.C. 1679(a)(3)-(4)] through its misrepresentations and deception as to the nature of the credit repair services it could provide Plaintiff. When Plaintiff was signing up for Defendant's services, a representative of Defendant represented to Plaintiff that, in exchange for upfront and monthly

1 payments, Defendant's services would ultimately result in the  
2 removal of negative credit information and the improvement of  
3 Plaintiff's credit. However, this representation was false and  
4 misleading. Despite Plaintiff making years of payments,  
5 Defendant failed to get the represented information removed or  
6 otherwise deliver the represented improvement to Plaintiff's  
7 credit. There was no meaningful improvement to Plaintiff's credit  
8 as a result of Defendant's services and Defendant failed to get the  
9 information removed despite repeatedly disputing such debts for  
10 years. As such, Defendant deceptively and misleadingly [sic] the  
11 results that Plaintiff could experience and did so in order to induce  
12 Plaintiff to sign up and to continue making payments for years  
13 under the false belief that information would be removed and her  
14 credit would improve. Plaintiff was led to believe by Defendant  
15 that Defendant's services would ultimately be beneficial to  
16 Plaintiff, despite failing to deliver that benefit.

12 29. Defendant further violated [15 U.S.C. 1679(a)(3)-(4)] through its  
13 deceptive conduct in disputing information which is not inaccurate  
14 or otherwise subject to removal. When Plaintiff and Defendant  
15 initially spoke regarding the services, Plaintiff explained to  
16 Defendant's representative and identified the information she  
17 wanted to have disputed through Defendant's program. Through  
18 such conversations and subsequent dealings, Defendant knew, or  
19 at the very least should have known, that the information it was  
20 disputing was not inaccurate or otherwise was unlikely to be  
21 removed through its disputes. However, Defendant nevertheless  
22 represented to Plaintiff that such accurate information would be  
23 removed from Plaintiff's credit through its disputes, and  
24 proceeded to dispute this accurate information for years (further  
25 illustrating the futility of Defendant's services). Defendant thus  
26 deceptively and misleadingly represented the extent of  
27 information that it could reasonably have removed from Plaintiff's  
28 credit reports, and did so in order to mislead Plaintiff into  
believing that Defendant would be able to remove information it  
could not properly or lawfully dispute.

26 30. Similarly, Defendant violated [15 U.S.C.] 1679(a)(4) through its  
27 deceptive conduct in disputing the same debts, with the same  
28 disputes, for years. Defendant, throughout the life of the parties'  
dealings, repeatedly submitted disputes challenging the same

1 debts. Upon information and belief, Defendant was notified by the  
2 credit reporting agencies that the information being disputed was  
3 accurate. Similarly, the fact that Defendant repeatedly disputed the  
4 same information, yet failed to get it removed, should have shown  
5 to Defendant that it would be unable to get the information  
6 removed. However, Defendant persisted in disputing these same  
7 debts for years, all the while collecting Plaintiff's monthly  
8 payments. Defendant's conduct constitutes a fraud or deception,  
or at least an attempt to commit a fraud or deception, as Defendant  
deceptively persists in a futile course of disputes in exchange for  
consumers' continued monthly payments.

9 31. Defendant further violated [15 U.S.C. 1679(a)(3)-(4)] through its  
10 deceptive representations that Defendant shall comply with the  
11 CROA and CCSA in connection with its services. In the contracts  
12 entered between the parties, Defendant avers that it 'shall conduct  
13 business in accordance with the provision of the Credit Repair  
14 Organizations Act, as well as CA Civ. Code §§ 1789.15(b), (c)  
15 and all other applicable laws.' However, it is clear that Defendant  
16 does not comply with the CROA and CCSA. Aside from  
17 Defendant's deceptive and misleading conduct, Defendant plainly  
18 failed to comply with the technical requirements of CROA or the  
19 CCSA in connection with its dealings with Plaintiff. Defendant  
20 makes this false and deceptive representation in an attempt to  
21 convince consumers that Defendant is a lawfully compliant  
22 company so as to not only (falsely) bolster their legitimacy and  
23 credibility in Plaintiff's and consumers' minds, but to similarly  
convince Plaintiff and consumers that any effort to vindicate their  
rights under such consumer protections statutes would be futile  
given Defendant's purported compliance therewith. At the very  
least, Defendant's representations in this regard are an attempt to  
commit a fraud and deception on consumers regarding the  
purported lawfully compliant nature of Defendant's services.

24 . . .

25 50. As outlined above, Defendant violated the above referenced  
26 provisions of the CCSOA in much the same way it violated 15  
27 U.S.C. 1679(a)(3)-(4).  
28

1        There are no pertinent allegations elaborating or otherwise providing  
2 specificity to those reflected above.

### 3                    **III.    STANDARDS OF REVIEW**

4  
5        Federal Rule of Civil Procedure 12(b)(6) permits a defendant to test whether,  
6 as a matter of law, the plaintiff is entitled to legal relief even if everything alleged in  
7 the complaint is true. *Metzler Inv. GMBH v. Corinthian Colleges, Inc.*, 540 F.3d 1049,  
8 1061 (9th Cir. 2008); *Arnold v. Loancare, LLC*, 120CV00189NONEEPG, 2021 WL  
9 325664, at \*4 (E.D. Cal. Feb. 1, 2021), *report and recommendation adopted*,  
10 120CV00189NONEEPG, 2021 WL 1089885 (E.D. Cal. Mar. 22, 2021). In deciding  
11 such a motion, the court must construe the complaint in the light most favorable to  
12 the plaintiff, accept all factual allegations as true, and determine whether the plaintiff  
13 undoubtedly can prove no set of facts in support of his/her claims that would entitle  
14 him/her to relief. *Navarro v. Block*, 250 F.3d 729, 732 (9th Cir. 2001). While liberal,  
15 this standard of review does require more than the bare assertion of legal conclusions.  
16 *See Monji v. Cnty. of Kern*, 119CV01526LJOJLT, 2020 WL 4676649, at \*2 (E.D.  
17 Cal. Aug. 12, 2020); *Calayag v. Potter*, CIVS050086LKKPANPS, 2005 WL  
18 8176755, at \*1 (E.D. Cal. Dec. 1, 2005).

19  
20        Federal Rule of Civil Procedure 9 provides, in pertinent part, “[i]n alleging  
21 fraud or mistake, a party must state with particularity the circumstances constituting  
22 fraud or mistake.” Fed. R. Civ. P. 9(b). This requirement is “supplemental” to  
23 the *Iqbal* pleading standards. *See e.g., Hoggan v. Specialized Loan Servicing, LLC*,



221CV01862TLNCKD, 2022 WL 4291421, at \*6 (E.D. Cal. Sept. 16, 2022). The Ninth Circuit interprets “particularity” as requiring plaintiffs to specify (1) the statements contended to be fraudulent, (2) identify the speaker, (3) state when and where the statements were made, and (4) explain why the statements were fraudulent. *See Swartz v. KPMG LLP*, 476 F.3d 756, 765 (9th Cir. 2007); *see e.g., Lopez v. Booz Allen Hamilton, Inc.*, 220CV01310JAMJDP, 2020 WL 7342396, at \*2 (E.D. Cal. Dec. 14, 2020) (finding that the plaintiff failed to satisfy Rule 9(b)’s particularity requirement to plead who, what, when, how, and why); *Hoggan*, 2022 WL 4291421, at \*6 (same); *Tatung Co., Ltd. v. Hsu*, SACV131743DOCANX, 2015 WL 11089493, at \*12 (C.D. Cal. Oct. 22, 2015) (same). Dismissal of a fraud claim for failure to plead with particularity under Federal Rule of Civil Procedure 9(b) is treated as a dismissal for failure to state a claim under Rule 12(b)(6). *Vess v. Ciba-Geigy Corp. USA*, 317 F.3d 1097, 1107 (9th Cir. 2003) (“A motion to dismiss a complaint or claim “grounded in fraud” under Rule 9(b) for failure to plead with particularity is the functional equivalent of a motion to dismiss under Rule 12(b)(6) for failure to state a claim.”).

#### IV. ARGUMENT

Plaintiff’s fraud-based claims are predicated on 15 U.S.C. § 1679b(a)(3)-(4) and Cal. Civ. Code § 1789.13, which state, respectively:

No person may make or use any **untrue or misleading representation** of the services of the credit repair organization.



1 15 U.S.C. § 1679b(a)(3) (emphasis added).

2 No person may engage, directly or indirectly, in any act, practice  
3 or course of business that constitutes or results in the commission  
4 of, or an attempt to commit, a **fraud or deception** on any person  
5 in connection with the offer or sale of the services of the credit  
6 repair organization.

7 15 U.S.C. § 1679b(a)(4) (emphasis added).

8 Make or use **untrue or misleading representations** in the offer  
9 or sale of the services of a credit services organization, including  
10 either of the following:

11 (1) **Guaranteeing or otherwise stating** that the credit services  
12 organization is able to delete an adverse credit history, **unless the**  
13 **representation** clearly discloses, in a manner equally as  
14 conspicuous as the guarantee, that this can be done only if the  
15 credit history is inaccurate or obsolete and is not claimed to be  
16 accurate by the creditor who submitted the information.

17 (2) **Guaranteeing or otherwise stating** that the credit services  
18 organization is able to obtain an extension of credit, regardless of  
19 the consumer's previous credit problems or credit history, **unless**  
20 **the representation** clearly discloses, in a manner equally as  
21 conspicuous as the guarantee, the eligibility requirements for  
22 obtaining an extension of credit.

23 Cal. Civ. Code § 1789.13(h) (emphasis added).

24 Engage, directly or indirectly, in an act, practice, or course of  
25 business that **operates or would operate as a fraud or deception**  
26 upon a person in connection with the offer or sale of the services  
27 of a credit services organization.

28 Cal. Civ. Code § 1789.13(i) (emphasis added).

“[I]t cannot be seriously disputed that [claims pursuant to 15 U.S.C.  
§ 1679(b)(a)(3)-(4)] fall within the scope of Rule 9(b).” *Slack v. Fair Isaac Corp.*,

1 390 F. Supp. 2d 906, 911 (N.D. Cal. 2005); *see also Browning v. Yahoo! Inc.*!, No.  
2 C04-01463HRL, 2004 WL 2496183 (N.D. Cal. Nov. 4, 2004); *Millett v. Equifax Info.*  
3 *Services, LLC*, 1:05-CV-2122-BBM, 2006 WL 8432555, at \*2 (N.D. Ga. Mar. 27,  
4 2006); *Sancho v. Davidson*, 3:05-CV-883 (RNC), 2006 WL 8448126, at \*1 (D. Conn.  
5 Mar. 3, 2006). This is so where, as here, such fraud-based CROA claims “rely almost  
6 exclusively on defendant[’s] allegedly ‘misleading and deceptive conduct[, which]  
7 conduct ‘sounds in fraud’ even if it would not necessarily give rise to a cause of action  
8 for deceit at common law.” *Slack*, 390 F. Supp. 2d at 911-912. And because the fraud-  
9 based CCSOA claims Plaintiff seeks to assert against Credit Pros substantially track  
10 the language contained in the fraud-based CROA claims Plaintiff seeks to assert  
11 against Credit Pros,<sup>2</sup> such fraud-based CCSOA claims must also fall within the scope  
12 of Rule 9(b).

17 Here, the Amended Complaint’s limited and conclusory allegations reveal  
18 Plaintiff seeks to rely upon purported guarantees and deception as to the nature of the  
19 credit repair services that Credit Pros allegedly provided Plaintiff, as well as Credit  
20 Pros’ purported representation that its services would be able to get negative  
21 information removed from Plaintiff’s credit reports, and in turn improve her credit in  
22 asserting her fraud-based CROA and CCSOA claims. Am. Compl., ¶ 11. But  
23  
24  
25

---

26  
27 <sup>2</sup> Indeed, Plaintiff’s allegations in support of her fraud-based CCSOA claims mirror her allegations  
28 in support of her fraud based CROA claims. *See* Am. Compl. ¶ 50 (“Defendant violated [Cal. Civ.  
Code § 1789.13(h) & (i)] in much the same way it violated 15 U.S.C. 1679(a)(3)-(4).”).

1 Plaintiff's reliance is misplaced because her Amended Complaint continued to  
2 noticeably fail to allege the circumstances constituting fraud with any particularity as  
3 required by Rule 9(b). Indeed, the Amended Complaint fails to allege, *inter alia*:  
4

- 5 1. the identity of the speaker(s) and such speaker's relationship to Credit  
6 Pros, *see* Am. Compl., ¶¶9 ("then spoke with a representative regarding  
7 Defendant's services"), 10 ("Plaintiff was informed that Defendant . .  
8 ."), 28 ("Defendant violated [15 U.S.C. 1679(a)(3)-(4)] through its  
9 misrepresentations and deception as to the nature of the credit repair  
10 services it could provide Plaintiff);
- 11 2. when the statements were made, *see* Am. Compl., ¶¶ 8  
12 ("In approximately February of 2021 . . ."), and 9 ("Around the same  
13 time . . .");
- 14 3. where the statements were made, *see* Am. Compl., ¶ 10 ("Upon speaking  
15 with Defendant.");
- 16 4. how the statements were made, *see, generally*, Am. Compl.;
- 17 5. how the statements were false, *see, generally*, Am. Compl.;
- 18 6. the intent of the speaker when making the statements, *see, generally*,  
19 Am. Compl.; and
- 20 7. the complete content and context of the statements, *see, generally*,  
21 Am. Compl.

22 These are vital and necessary allegations that Plaintiff must assert as required  
23 by Rule 9's heightened pleading standard that serves "safeguard defendant's  
24 reputation and goodwill from improvident charges of wrongdoing." *Vess v. Ciba-*  
25 *Geigy Corp. USA*, 317 F.3d 1097, 1104 (9th Cir. 2003); *Sancho v. Davidson*, 3:05-  
26 CV-883 (RNC), 2006 WL 8448126, at \*1 (D. Conn. Mar. 3, 2006) (quoting *O'Brien*  
27 *v. Nat'l Prop. Analysts Partners*, 936 F.2d 674, 767 (2d Cir. 1991)); *see also* *Steves*  
28

1 & Sons, Inc. v. Trinity Glass Intern., Inc., CIV.A. SA06CV357XR, 2007 WL  
2 1556743, at \*3 (W.D. Tex. May 25, 2007).

3  
4 At its core, the Amended Complaint continues to allege someone(s) made some  
5 representation(s) at some time(s) from some location(s) in some medium(s) that  
6 Credit Pros could somehow “improve[] [Plaintiff’s] credit” and be able to get  
7 “negative information removed” from Plaintiff’s credit reports, but “Defendant failed  
8 to perform the services or deliver the results in the timeframe represented.”  
9 Am. Compl., ¶¶ 11, 17. This does not come close to complying with Rule 9(b)’s  
10 heightened pleading standard. *See Benchmark Elecs., Inc. v. J.M. Huber Corp.*, 343  
11 F.3d 719, 724 (5th Cir. 2003) (“particularity” requires specificity concerning (1) the  
12 statements contended to be fraudulent, (2) identify the speaker, (3) when and where  
13 the statements were made, and (4) explain why the statements were fraudulent). As a  
14 result, this Court should enter an Order dismissing the fraud-based claims attempted  
15 to be asserted in Plaintiff’s Amended Complaint, this time with prejudice.  
16  
17  
18  
19

## 20 V. CONCLUSION

21 Plaintiff’s fraud based CROA and CCSOA claims (Count I(a) and Count II(a))  
22 recite the respective statutory language at issue while using “buzz words,” but still  
23 noticeably fail to allege any circumstances of fraud with particularity as required by  
24 Federal Rule of Civil Procedure 9(b). As a result, such claims should be dismissed  
25 with prejudice.  
26  
27  
28

**WHEREFORE**, Defendant, The Credit Pros International Corporation, respectfully requests this Court enter an Order granting the instant Motion, dismissing Plaintiff's Amended Complaint [D.E. 10], and granting any such further and other relief in favor of Credit Pros as this Court deems just and proper.

Dated: October **25**, 2023

/s/Ryan Duckett

RICHARD C. GILLER

RYAN DUCKETT

*Attorneys for The Credit Pros International Corporation*

## CERTIFICATE OF SERVICE

I hereby certify that on this 25th day of October, 2023, I electronically filed the foregoing document with the Clerk of Court using CM/ECF. I also certify that the foregoing document is being served this day on all counsel of record or *pro se* parties in the manner specified, either via transmission of Notices of Electronic Filing generated by CM/ECF or in some other authorized manner for those counsel or parties who are not authorized to receive electronically Notices of Electronic Filing.

/s/Ryan Duckett

RICHARD C. GILLER

RYAN DUCKETT